



CIVIL JUSTICE TAX FAIRNESS ACT OF 2015 (H.R.3550/S.2059)

Employment and civil rights lawsuits are often difficult to settle because of the excessive and unfair tax treatment of settlements and awards in these cases. In settling such cases, the parties have to take into account: (1) the tax an employee must pay on damages for non-economic harm that he or she suffered (e.g., due to egregious sexual harassment); and (2) the tax on lump sum recoveries for multiple years of back or front pay, which are unfairly taxed entirely in the year of receipt. These tax policies drive up costs for both employees and employers when settling employment and civil rights cases.

The bipartisan **Civil Justice Tax Fairness Act of 2015 (CJTFA, [H.R.3550/S.2059](#))** was introduced by Representatives John Lewis (D-GA) and Jim Sensenbrenner (R-WI) and Senators Susan Collins (R-ME) and Ben Cardin (D-MD) in the 114th Congress. If passed, the CJTFA will end these inequities in unlawful discrimination cases (including employment and civil rights claims) by excluding non-economic damages from gross income and by allowing income averaging for multiple years of back or front pay.

How Will The CJTFA Help Employers?

The CJTFA will make it easier to settle cases before trial, because employers in many cases must “gross up” the settlement or award to cover the employee’s higher taxes. Employers, therefore, would not have to pay as much to resolve meritorious claims.

How Will The CJTFA Help Employees?

The CJTFA will help employees who vindicate their employment and/or civil rights by requiring that they pay taxes on only the economic component of their settlements or awards. It will reduce the taxes employees pay on lump sum back and front pay awards by requiring that they pay taxes at fair rates.

How Will The CJTFA Promote Tax Fairness?

The CJTFA will correct current inequities in tax treatment of settlements and awards received by individuals in employment and civil rights cases. Under current law, those who suffer non-economic damages as a result of unfair employment practices pay taxes; those who suffer non-economic damages as a result of physical injuries (such as from car accidents) do not. The CJTFA will correct this unfairness by excluding from gross income non-economic damages received in civil rights and employment cases.

Similarly, employees who have not lost wages pay taxes at the rates applicable to the actual wages they earned in each year. But if they receive back or front pay in a settlement or award, they must pay taxes on lump sum recoveries that represent multiple years of such pay—a patently unfair practice. The CJTFA will correct this unfairness by taxing lump sum recoveries as if they were received in the year earned and by providing an exemption from the alternative minimum tax (AMT) for any resulting tax benefit.

How Will The CJTFA Affect The Courts?

By making settlements less expensive and easier to achieve, the CJTFA will reduce the number of employment and civil rights cases that go to trial, freeing up valuable court resources for other matters.

Who Supports The CJTFA?

Because the CJTFA is both pro-business and pro-employee, over the years this legislation has had the support of business groups (e.g., the Society for Human Resources Management and the U.S. Chamber of Commerce) and lawyers (e.g., the American Bar Association and the Association of Corporate Counsel). It also has garnered the support of civil rights organizations such as the Leadership Conference on Civil and Human Rights, the Human Rights Campaign, Public Citizen, and the Impact Fund. The CJTFA is one of NELA's top legislative priorities.

How Is The CJTFA Different From The CRTRA That Was Enacted In 2004?

In October 2004, with NELA leading the charge, Congress passed the provision of the CRTRA ending double taxation of attorneys' fees in employment and civil rights cases as part of the American Jobs Creation Act of 2004. That bill, however, did not deal with the other two tax problems addressed by the CJTFA.

How Much Will The CJTFA Cost?

The CJTFA has not been scored in recent Congresses. The predecessor bill introduced in the 108th Congress was estimated to cost \$632 million over ten years. That bill, however, addressed all three aspects of the civil rights tax problem: double taxation of attorneys' fees, taxation of non-economic damages, and taxation of lump sum recoveries for multiple years of pay. Because the provision eliminating the double taxation of attorneys' fees was enacted in 2004, the cost of the remaining two provisions should be substantially less.